LIBRARY
SUPREME COURT, U.S.

FILED
JAN 9 1958
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

October Term, 1957

No. 665

A. H. BULL STEAMSHIP CO.,
Petitioner,

against

NATIONAL MARINE ENGINEERS' BENEFICIAL ASSOCIATION, AFL-CIO, and INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, INC, AFL-CIO,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENT INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, INC., AFL-CIO, IN OPPOSITION

MARVIN SCHWARTZ,
Attorney for Respondent International Organization of Masters, Mates & Pilots, Inc., AFL-CIO.

MARVIN SCHWARTZ,
BETTY H. OLCHIN,
Of Counsel.

INDEX TO PETITION

	PAGE
Preliminary Statement	1
Opinions Below	2
Jurisdiction	3
Questions Presented	3
Statutes Involved	4
Statement	4
Reasons for Not Granting the Writs	9
Argument on Questions Presented	14
Conclusion	18
APPENDIX:	
Opinion of the United States Court of Appeals for the Second Circuit	19
Court of Appeals per Curiam	31
Labor Management Relations Act	32
Norris-La Guardia Act	35

Table of Cases Cited

Bakery Drivers Union v. Wagshal, 333 U. S. 437 (1948)	12, 16
Brotherhood of Railroad Trainmen v. Chicago River & Indiana R. R. Co., 353 U. S. 30 (1957)	13
Deckert v. Independence Shares, Inc., 311 U. S. 282 (1940)	12, 13
DiGiorgio Fruit Corp. v. N. L. R. B., 191 F. (2) 642 (C. A. 5, 1951)	14, 15
Graham v. Brotherhood of Firemen & Enginemen, 338 U. S. 232 (1949)	13

PAGE

International Rice Milling Co. v. N. L. R. B., 183 F. 2d 21 (1951) 13, 15

Larsen v. Domestic & Foreign Group, 337 U. S. 682 (1949) 12

National Labor Relations Board v. Lion Oil Co., 352 U. S. 282 (1957) 11

W. T. Smith Lumber Co. v. N. L. R. B., 246 F. 2d 129 (1957) 13, 14, 15

Syres v. Oil Workers Union, 350 U. S. 892 (1955) .. 13

Virginian Railway Co. v. System Federation No. 40, 300 U. S. 515 (1937) 13

Miscellaneous

New York Civil Practice Act, Section 876a 7

Remarks of Senator Taft, 93 Cong. Rec. 3952 (1947) 10

IN THE

Supreme Court of the United States

October Term, 1957

No. 665

A. H. BULL STEAMSHIP CO.,

Petitioner,

against

NATIONAL MARINE ENGINEERS' BENEFICIAL ASSOCIATION, AFL-CIO, and INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, INC, AFL-CIO,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENT INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, INC., AFL-CIO, IN OPPOSITION

Preliminary Statement

A. H. Bull Steamship Co., hereinafter called "Bull", has applied in a single petition for writs of certiorari to review judgments in two separate cases of the United States Court of Appeals for the Second Circuit. The first case is "Bull" v. Seafarers' International Union of North America, hereinafter called "SIU", Docket No. 24840, and was argued October 8, 1957. The second case is "Bull" v. National Marine Engineers Beneficial Association, AFL-CIO, hereinafter called "MEBA", and Inter-

national Organization of Masters, Mates & Pilots, Inc., AFL-CIO, hereinafter called "MMP", Docket No. 24874, and was argued October 28, 1957.

This brief in opposition to Bull's petition, submitted on behalf of respondent "MMP", is confined solely to the questions raised in the second case to which it is a party. MMP submits that until this Court rules upon Bull's petition in the SIU case, there is no occasion to pass upon the questions raised in the MMP case.*

The SIU case involves the determination of the question whether Section 301 of the Labor Management Relations Act, 29 U. S. C. § 185, empowers the District Court to enjoin, *pendente lite*, peaceful picketing by a "labor organization", as defined in the Act, in actions based upon an alleged breach of contract. The questions in the action to which MMP is a party are subsidiary to this question and will only arise if this Court should grant certiorari in the SIU case *and* upon consideration of the question itself, decide favorably to petitioner.

Opinions Below

The opinion of the United States District Court for the Southern District of New York, dated October 17, 1957 (112a-120a)[1], the opinion of the Court of Appeals,

---

* We do not overlook the fact that petitioner has raised a question as to whether Sec. 14(a) of the Labor Management Relations Act removes supervisors from the protection of the Norris-LaGuardia Act. But, even a cursory examination of petitioner's arguments in support of this question when compared with its refutation by the Court of Appeals (App. 29-30) clearly shows that it is not the type of question for which certiorari is granted.

[1] Page references followed by "a" are to Appendix of Defendants-Appellants filed in the appeal to the Court of Appeals. Page references preceded by "App." are to the Appendix herein.

dated November 21, 1957 (App. 19 30), and the Per Curiam opinion of the Court of Appeals dated November 27, 1957, denying a stay of the issuance of its mandate (App. 31) are not officially reported.

Jurisdiction

The judgment of the Court of Appeals was entered on November 21, 1957. No petition for rehearing was filed. The petition for a writ of certiorari was filed on December 14, 1957. The jurisdiction of this Court is invoked under 28 U. S. C. Section 1254(1). For the reasons indicated in the Preliminary Statement, page 2, *supra*, this single petition for certiorari is inappropriate.

Questions Presented

1. Does Section 301(a)[2] of the Labor Management Relations Act of 1947, 29 U. S. C. § 185, empower the District Court to enjoin, *pendente lite*, peaceful picketing by Bull's licensed deck officers who are admittedly supervisors and thus not statutory employees, upon the allegation by Bull that MMP, which alleges that it is not a "labor organization" as defined in the Act, has breached its collective bargaining agreement?

---

[2] "Sec. 301. (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties".

II. Has Section 14(a)[3] of the Labor Management Relations Act of 1947, 29 U. S. C. § 164a, by implication[4] removed persons therein defined as "supervisors" from the protection of the Norris-LaGuardia Act, 29 U. S. C. § 101, *et seq.*?

Statutes Involved

The Statutes involved are Labor Management Relations Act, 1947, as amended, Section 2(3), 2(5), 2(11), 10(h), 14(a), 208, 301(a), 302, 29 U. S. C. § 152(3), (5), (11), 160(h), 164, 185a, 178, 186, and Norris-LaGuardia Act, Sections 1, 4, 7, 13(a)(b)(c), 29 U. S. C. Secs. 101, 104, 107, 113. These statutes are set forth at pages 32-39 of the Appendix *infra*.

Statement

This case arises out of a dispute between Bull and MMP over wages. All of the licensed deck officers and the Masters employed by Bull are members of MMP.[5] The present collective bargaining agreement between Bull and MMP

---

[3] Sec. 14. (a) Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this Act shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining.

[4] Where Congress intended to lift the bar of the Norris-LaGuardia Act in other sections of the Labor Management Relations Act, it did so expressly. See Sec. 10(h), Sec. 208(b) and Sec. 302(e). (App. 33-35)

[5] MMP membership is composed of non-statutory employees and MMP is therefore not a "labor organization" as defined in the Labor Management Relations Act.

provides for a wage review.[6] Pursuant to this provision, Bull and MMP met. After several meetings negotiations were discontinued because Bull flatly refused any wage increase that would have been realistic for Bull's circumstances. Unlike the collective bargaining agreement between MMP and certain other steamship companies, arbitration is not provided for in the event of disagreement during wage reviews,[7] but only for the interpretation of the meaning of the various provisions of the collective

---

[6] Section 1 (c). "During the life of the agreement either party may request two wage reviews upon 60 days prior written notice provided, however, that no wage review shall be held prior to September 30, 1956. Said wage review may include general wages, overtime and penalty rates, and additional compensation for Masters and non-watchstanding Licensed Deck Officers and the rate for Relief Deck Officers."

[7] See 60a, 65a. In the collective bargaining agreement between Pacific Maritime Association and Internat'l Organization of Masters, Mates and Pilots, Inc., the wage review clause reads as follows:

Sec. 1 . . . "Either party to the agreement may request two wage reviews upon sixty (60) days' prior written notice, provided, however, that no wage review shall be held prior to June 15, 1956. Said wage review may include general wages, overtime and penalty rates, the additional compensation for Master and non-watchstanding Licensed Deck Officers and the rate for Relief Deck Officers. The provisions of Section 3 shall be applicable in the event of disagreement at the time of Wage Review. (Amended August 3, 1955.)

"If *no agreement is reached through negotiations in thirty (30) days after receipt of such notice of review, the issues shall be referred to arbitration.* The arbitrator's decision shall be rendered by the review date, and shall take effect at 12:01 A. M. on the day following the review date." (Emphasis supplied.)

bargaining agreement.[5] Therefore, commencing August 20, 1957, MMP maintained a single peaceful picket patrolling at each of two piers owned by Bull at which Bull vessels were docked. The picket carried signs which clearly indicated that the dispute was between Bull and MMP and distributed handbills carefully explaining that MMP had no complaint or difference with any other employer who might be doing business with petitioner steamship company (61a).

---

[5] Section 3 of the agreement with Bull provides:

"Section 3—Grievance Procedure and Arbitration.

"(a) There shall be no strikes, lockouts or stoppages of work during the period of this Agreement. All disputes relating to the interpretation or performance of this Agreement which may arise between the parties to this Agreement shall be determined by a Licensed Personnel Board consisting of two persons appointed by the Organization and two persons appointed by the Committee for Companies and Agents. The parties shall submit any such dispute for decision by the Board and they agree to be bound by the decision of a majority thereof. The Board shall agree to such rules for procedure as it may deem necessary."

Compare the following provisions relating to wage and pension payments not involving interpretation of the agreement where arbitration was specifically provided for or rejected.

"Section 9—Wages.

"(e) . . . When vessels of power tonnage of 25,000 tons and over or vessels with a new type power plant are put into operation the Organization shall have the right to raise the issue of the wages to be paid to the Licensed Deck Officers aboard said vessels and in the event of disagreement in negotiations said issue shall be submitted to arbitration in accordance with the provisions of Section 3."

If Section 3 covered arbitration of all issues, the specific reference to arbitration would be unnecessary.

"Section 36—Pension and Welfare Plan.

"Effective June 16, 1955, the amount of contribution to the M.M.&P. Pension and Welfare Plan shall be $1.60 per day per man on Company payroll represented by the Organization for the purpose of collective bargaining. There shall be no reopening on contributions to said plan prior to September 30, 1958."

During negotiations arbitration on reopening of this provision was specifically rejected (60a-61a).

Thereupon, alleging that said picketing constituted a breach of the collective bargaining agreement, Bull made an application on August 27, 1957 for a temporary injunction, *pendente lite*, in the Supreme Court, County of Kings. Judge Cone held that there was a bona fide labor dispute (41a-46a),[9] denied the injunction *pendente lite*, and Bull's complaint was dismissed with leave to amend because of its failure to comply with New York Civil Practice Act, Section 876a, a "little Norris-LaGuardia Act." Bull thereafter, on September 9, 1957, amended its complaint and filed a new application for a temporary restraining order. In accordance with the requirement of Section 876a of the New York Civil Practice Act, Bull's application was referred to a referee to determine whether or not Bull's allegation that MMP breached its collective bargaining agreement was correct (57a-58a). At this point, strangely enough, Bull seemed to lose interest,** the hearing before the referee were postponed, and Bull served MMP with an order to show cause, before Judge Bruchhausen in the United States District Court for the Eastern District of New York, why an injunction *pendente lite* should not be granted. Thereupon, without a hearing, an injunction of broad scope was granted.

On appeal to the Court of Appeals, MMP contended that Bull's complaint on which the injunction *pendente lite* was granted failed to establish a cause of action for breach

---

[9] Obviously such a finding would not have been made if there were some sinister purpose behind MMP's dispute as Bull insinuates at page 5 of its petition.

** This loss of interest is particularly significant in view of the problems present in Bull's federal court application which would not exist in the state court action. In the latter there is no problem concerning the inclusion of supervisors under the State Act and unlike proceedings governed by the Norris-LaGuardia Act, a breach of contract can be enjoined. Thus Bull would only have had to establish that its contract had been breached.

of contract since under the agreement respondent is not denied its traditional right to strike to enforce its demand made pursuant to the wage reopening provision. MMP further contended that the court lacked jurisdiction under Section 301 of the Labor Management Relation Act since that section grants jurisdiction only where one of the parties is a "labor organization" (as defined in the Act) representing "employees" (as defined in the Act). Neither statutory definition applies since MMP is not a "labor organization" and even Bull's allegations in the state court proceedings admit that MMP members employed aboard Bull's ships are supervisors (53a, 54a).

MMP further contended that the Court was without jurisdiction to issue the injunction where the complaint is based upon diversity of citizenship because of the provisions of the Norris-LaGuardia Act, 29 U. S. C. A. § 101 *et seq.* Under this Act, the Court cannot issue an order restraining any person or persons participating or interested in a labor dispute from ceasing or refusing to perform any work, or from giving publicity to the existence of, or the facts involved in any labor dispute, whether by advertising, speaking, patrolling or by any other method not involving fraud or violence. Under this Act peaceful picketing in a labor dispute cannot be enjoined. Since the complaint fails to allege that the picketing is other than peaceful, it fails to state a claim upon which relief can be granted. Even if it does state a claim, the Norris-LaGuardia Act requires the Court to hold a hearing before granting an injunction.

The Court of Appeals, following its decision in the SIU case, held that a temporary injunction could not be granted in an action under Section 301(a) without complying with the provisions of the Norris-LaGuardia Act. It did not determine whether the strike constituted a breach of contract since the District Court exceeded its authority in any case (App. 22). The Court of Appeals further held that Section 301(a) is inapplicable to suits involving con-

tracts covering supervisors. It held that where such a contract was the subject of the action, the suit was not one between an employer and a "labor organization representing employees" for the purpose of the action. Thus, the Court of Appeals found it unnecessary to determine whether the union came within the definition of "labor organization" in all cases. It did not have to determine as an issue of fact whether the union had any non-supervisory members not covered by the contract with Bull. This act was so interpreted "in order to effectuate Congress' avowed intention to remove supervisors from the protection of the National Labor Relations Act" (App. 24-25). Otherwise, the Court held, "individuals excluded by the Act could join unions which represent some 'employees' and gain the protections of the Act"[10] (App. 25).

The Court of Appeals further held that where jurisdiction was asserted against MMP on the basis of diversity of citizenship the Norris-LaGuardia Act clearly prohibited the issuance of the injunction. The Labor Management Relations Act was held, in accordance with the legislative history of the Act and the clear meaning of the statutory language, not to have removed supervisors from the protection of any act other than the Labor Management Relations Act itself (App. 29-30).

Reasons for Not Granting the Writs

Bull advances certain reasons for granting the Writs. We shall now list them, and then answer them seriatim.

1. As interpreted by the Court of Appeals, the provisions of the Norris-LaGuardia Act and Section 301 of the Labor Management Relations Act are in conflict.

---

[10] Thus, supervisory members of a "labor organization" could sue employers for breach of contract under Section 301(a) while supervisory members of a union composed solely of supervisors and therefore not a "labor organization" could not do so.

2. In the officers' case (MMP & MEBA), there is a fundamental question as to the position of supervisors under our national labor laws.

3. This case is of transcendent importance to the economy of the Commonwealth of Puerto Rico.

4. The interlocutory nature of the Court of Appeals' order, dissolving the injunction *pendente lite*, should not militate against granting certiorari because of the impact of the Court of Appeals order on the future conduct of this litigation; and

5. The decision of the Court of Appeals is in conflict with certain decisions of this Court.

Answering Bull's contentions:

1. The Court of Appeals' opinion does not cause conflict between Section 301 of the Labor Management Relations Act of 1947 and the Norris-LaGuardia Act.

This issue is the issue in the SIU case and will not be discussed here except as incidentally covered in the discussion of the alleged conflict of decisions in "5" below.

2. The position of supervisors under our national labor laws is settled. The policy has long been expressed as restoring them to the status they had prior to the passage of the Wagner Act. This is clearly expressed in the Labor Management Relations Act as well as its legislative history. See remarks of Senator Taft, 93 Cong. Rec. 3952 (1947) (App. 30). Until this case it has never been suggested that:

(a) statutory language should not be read in accordance with the statutory definitions expressly included in the Act or that

(b) the fact that Section 14(a) of the Labor Management Relations Act reiterates that an employer does not have to bargain with supervisors means that the juris-

diction of the federal District Court to grant an injunction in a labor dispute between employer and employee, employer and employer, or employee and employee, has been enlarged.

3. Allegations by Bull as to the economy of Puerto Rico not only have no relevance to the existence or nonexistence of issues of such importance that this court should add this case to its crowded calendar, but they are unsupported by any facts. The continued existence of the Commonwealth of Puerto Rico is not dependent upon the decision of this case by this Court. Bull may presently have an almost complete monopoly of the shipping between the Continental United States and Puerto Rico. This does not mean that other companies are not ready and willing to participate in this trade. In fact, prior to the time that the strike and picketing were enjoined, other companies quickly began to increase their service to the island. Bull should not be able to assert a greater right to a hearing before this court merely because of its size and near monopoly.

4. The order of the Court of Appeals dissolving the injunction *pendente lite* is plainly an interlocutory order, and the decision of the questions posed in this case will not dispose of the controversy between the parties. All that has been denied Bull is a temporary injunction, prior to a hearing, against peaceful picketing of its vessels by the vessels' officers. Even Bull doesn't claim that it has any right to an injunction in the absence of the picketing being held a breach of the collective bargaining agreement. *National Labor Relations Board* v. *Lion Oil Co.*, 352 U. S. 282 (1957), was also a case in which a union picketed in support of a wage demand during a wage review. In holding that the picketing did not breach the collective bargaining agreement, this Court said:

> "Where there has been no express waiver of the right to strike, a waiver of the right during such a period is not to be inferred."

The Court also made this pertinent observation:

> "Unions would be wary of entering into long term contracts with machinery for reopening them for modifications from time to time if they thought the right to strike would be denied them for the entire term of such a contract though they imposed no such limitations on themselves."

Therefore, until it has been conclusively determined that MMP has breached its contract, there is no need to determine the questions posed by Bull. No hearing was held on this issue by the District Court. The Court of Appeals did not pass on this issue (App. 22).

In support of its argument of the special circumstance of the interlocutory order in this case and the impact on the future conduct of this litigation, Bull cites three cases[11] and refers to the *Wagshal* case as the "labor case". In this case the district court determined that no labor dispute was involved and issued an injunction. The Court of Appeals dismissed the appeal and held that such an interlocutory order was not appealable as a matter of right because it did not grow out of a "labor dispute" within the meaning of the Norris-LaGuardia Act. This Court granted certiorari and affirmed that the facts did not constitute a labor dispute and therefore as a matter of law the district court order was not within the Norris-LaGuardia provision which granted an appeal to the Court of Appeals, as a matter of right.

In the *Larsen* case, the issue was whether the district court had jurisdiction. The district court had dismissed, holding that the suit was against the sovereign. The Court of Appeals reversed. This Court disposed of the case by upholding the district court and dismissing the complaint.

---

[11] *Larsen* v. *Domestic & Foreign Group*, 337 U. S. 682 (1949); *Deckert* v. *Independence Shares, Inc.*, 311 U. S. 282 (1940); and *Bakery Drivers Union* v. *Wagshal*, 333 U. S. 437 (1948).

In *Deckert v. Independence Shares, Inc.*, 311 U. S. 282 (1940), the question of law presented was whether the Securities Act of 1933, authorized equitable relief against third parties, and this question was vital not only to the granting of temporary relief but to the granting of any relief.

Can any of these cases be said to be comparable to the MMP case where the appellate court held that peaceful picketing in a labor dispute could not be enjoined *pendente lite* without a hearing having first been held to ascertain the facts necessary to establish the court's jurisdiction?

5. MMP will not here discuss the question in the SIU case involving issuance of an injunction under Section 301 other than to state that Bull has failed to establish any real conflict between the decisions of the Court of Appeals and prior decisions of the Court; *Syres* v. *Oil Workers Union*, 350 U. S. 892 (1955); *Brotherhood of Railroad Trainmen* v. *Chicago River & Indiana R. R. Co.*, 353 U. S. 30 (1957); *Graham* v. *Brotherhood of Firemen and Enginemen*, 338 U. S. 232 (1949); *Virginian Railway Co.* v. *System Federation No. 40*, 300 U. S. 515 (1937). The cases at bar are unlike those under the Railway Labor Act where statutory rights of minorities to be represented without discrimination by a majority union were created and there was a clear congressional intention to enforce them or where the same act specifically provided for arbitration of minor disputes. In these Railway Labor Act cases cited by Bull, the clear congressional intent was to permit injunctive relief. That there is no conflict between the decision below and the *W. T. Smith Lumber Co.* v. *NLRB*, 246 F. 2d 120 (1957) and *International Rice Milling Co.* v. *NLRB*, 183 F. 2d 21 (1951), cases is shown in our discussion of the first question presented.

Argument On Questions Presented

I. Section 301(a) of the Labor Management Relations Act of 1947, 29 U. S. C. § 185, does not empower the District Court to enjoin, *pendente lite*, peaceful picketing by Bull's licensed deck officers who are admittedly supervisors and thus not statutory employees, upon the allegation by Bull that MMP, which alleges that it is not a "labor organization" as defined in the Act, has breached its collective bargaining agreement.

MMP will not here discuss the issuance of an injunction against the SIU under Section 301 since the SIU is admittedly a labor organization.[12] Even Bull doesn't contend that Section 301 of the Labor Management Relations Act applies to a union composed solely of non-statutory employees. See *DiGiorgio Fruit Corp.* v. *N.L.R.B.*, 191 F. (2) 642 (C. A. 5, 1951), cited in *Smith Lumber Co.* v. *N.L.R.B.*, 246 F. (2) 120 (C. A. 5, 1957).[13]

The Court of Appeals found that in order for Section 301 to apply, MMP had not only to be found to be a "labor organization" but also Bull's licensed deck officers had to be found to be statutory employees. As the Court of Appeals points out, such a finding would be hardly likely in view of Bull's admission in its pleadings in the State Court Action (53a, 54a). Bull, of course, complains of this "literal" reading of the statute. Bull would make meaningless the words "representing employees" after the words "labor organization". Bull would also ignore the distinction between the language in Section 301(a) and that in Section 8(b) which refers to unfair labor practices. Section 8(b) states:

---

[12] Section 301 clearly refers to "a labor organization *representing employees*." (Emphasis supplied.)

[13] The District Court granted the injunction *pendente lite* without affording MMP a hearing at which it could establish that all of its members were excluded from the statutory definition of employees.

> "It shall be an unfair labor practice for a *labor organization* or its agents * * * " (Emphasis supplied.)

The construction by the Court of Appeals for the Second Circuit is in accord with the decisions of the Fifth Circuit in *International Rice Milling Co.* v. *N.L.R.B.*, 183 F. 2d 21 (1951) and *W. T. Smith Lumber Co.* v. *N.L.R.B.*, 246 F. 2d 129 (1957), cited by petitioner as being in conflict with the decision below. In these cases, the court considered the meaning of the word "employer" in Section 8(b)(4) of the Act, and held that it was modified by the preceding word "any" and the following phrase "or other person". This made a distinction between "an employer" as defined in the statute in a limited sense and "any employer or other person", which indicates an unrestricted meaning. Such a construction did not operate to place the prohibitions of the Act upon a class or organization otherwise excluded since it only applied to the objects of a secondary boycott, not the union or primary employer. As the Fifth Circuit held in a footnote to the *Smith Lumber* case, distinguishing the *DiGiorgio* case, *supra*:

> "* * * for there the court held that the Board had no authority over a secondary boycott induced by a labor organization composed of agricultural laborers (because of the interaction of Sections 2(3), and 8(b) of the Act) since there the impact of the Board's order would necessarily have fallen directly on an organization exempt from its jurisdiction, while here and in the *Rice Milling* case the petitioner and the charged party are both subject to Board jurisdiction, and only the third parties the union is attempting to involve in the secondary boycott are exempt from the provisions of the Act."

Thus it can be seen that there is no conflict between the decisions of the Second and Fifth Circuits. Neither circuit extends the prohibitions of the Act to organizations or classes specifically excluded. The decision of the Second Circuit is in accord with the express Congressional purpose

to remove supervisors from the protection and prohibition of the Act. Congress clearly did not include a union with membership limited to supervisors within the term "labor organization" wherever employed in the Act. Nor did it make collective bargaining contracts concerning supervisors subject to suit under the Act. To rule as Bull wishes is to rewrite the National Labor Relations Act to include supervisors, contrary to congressional intent as clearly expressed in the Act itself and the legislative history.

II. Section 14(a) of the Labor Management Relations Act of 1947, 29 U. S. C. § 64a, has not by implication removed persons therein defined as "supervisors" from the protection of the Norris-LaGuardia Act, 29 U. S. C. § 101, *et seq.*

Insofar as jurisdiction is based upon diversity of citizenship, the Norris-LaGuardia Act is clearly controlling. Section 14(a) of the National Labor Relations Act does not by implication remove persons therein defined as "supervisors" from the protection of the Norris-LaGuardia Act in suits brought by individuals. That this question is free from doubt is shown by the fact that no federal court has ever held otherwise. This Court, in the *Bakery Drivers' Union* case, *supra*, has held that the only time that the National Labor Relations Act has lifted the prohibition of the earlier act, it has given the National Labor Relations Board the authority to enjoin peaceful picketing and not private parties. See National Labor Relations Act, Sections 10(h), 208, 302, 29 U. S. C. Sections 160(h), 178, 186 (App. 33-35). The Court of Appeals, below, followed the decisions of this Court. It answered the inventive argument of Bull in the following language (App. 29-30):

> "Bull argues, and the court below held, that § 14(a) of the Taft-Hartley Act of 1947, 29 U. S. C. § 164(a), makes the Norris-LaGuardia Act inapplicable to

cases involving employers and their supervisory employees. That section provides:

> 'Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this subchapter shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining.'

"Section 14(a) makes no explicit reference to the Norris-LaGuardia Act. The clause 'no employer subject to this subchapter shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, national or local, relating to collective bargaining' contained in § 14(a) obviously does not relate to the Norris-LaGuardia Act, which prohibits federal injunctions in labor dispute cases, whether the dispute is between employers and employees, employers and employers, or employees and employees. 29 U. S. C. § 113(a). The legislative history of § 14(a) makes it clear that Congress intended the quoted clause to describe statutes which require employers to bargain collectively or be guilty of an unfair labor practice or its state law equivalent. The whole thrust of the supervisor provisions in the Taft-Hartley Act of 1947 was to remove supervisors from the operation of the National Labor Relations Act and return them 'to the basis which they enjoyed before the passage of the Wagner Act.' And no mention is made in the statute, the reports, or the congressional debate indicating that the Norris-LaGuardia Act was henceforth to be inapplicable to peaceful strikes by supervisory personnel. Moreover, contrary to Bull's contentions, denying the injunction on the basis of the Norris-LaGuardia Act does not compel Bull to bargain collectively with its supervisors in contradiction of the purpose of § 14(a). Bull can refuse to bargain, discharge the supervisors, and be guilty of no unfair labor practice or conduct proscribed by any other law, either national or local, relating to collective bargaining."

That even Bull does not consider the question which it has raised to be worthy of this court's consideration can be seen from the fact that it devotes only 15 lines of its petition to this question and in these 15 lines it merely poses the question and advances no argument as to why it should be considered by this Court.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

MARVIN SCHWARTZ,
Attorney for Respondent
International Organization of
Masters, Mates & Pilots, Inc.,
AFL-CIO.

MARVIN SCHWARTZ,
BETTY H. OLCHIN,
Of Counsel.

January 8, 1958.

APPENDIX

(Opinion of the United States Court of Appeals for the Second Circuit)

(Record, pages 129a-141a)

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 166—October Term, 1957

(Argued October 28, 1957. Decided November 21, 1957.)

Docket No. 24874

A. H. BULL STEAMSHIP CO.,
Plaintiff-Appellee,

v.

NATIONAL MARINE ENGINEERS' BENEFICIAL ASSOCIATION, AFL-CIO and INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, INC., AFL-CIO,
Defendants-Appellants.

Before:

CLARK, Chief Judge, and
LUMBARD and MOORE, *Circuit Judges*.

Appeal from the United States District Court for the Eastern District of New York, Walter Bruchhausen, *Judge*.

National Marine Engineers' Beneficial Association, AFL-CIO and International Organization of Masters,

Mates and Pilots, Inc., AFL-CIO appeal from the grant of an injunction, *pendente lite*, restraining them from continuing peaceful strikes claimed to be in violation of their collective bargaining agreements with plaintiff, A. H. Bull Steamship Co. Reversed and remanded.

James V. Hayes, of Donovan, Leisure, Newton & Irvine, New York City (A. V. Cherbonnier, of Satterlee, Browne & Cherbonnier, New York City, Theodore S. Hope, Sidney P. Howell, Jr., and Helmut J. F. Furth, of Donovan, Leisure, Newton & Irvine, New York City, on the brief), for plaintiff-appellee.

Lee Pressman, New York City, for defendant-appellant National Marine Engineers' Beneficial Association, AFL-CIO.

Marvin Schwartz, New York City (Betty H. Olchin, New York City, on the brief), for defendant-appellant International Organization of Masters, Mates and Pilots, Inc., AFL-CIO.

Clark, *Chief Judge*:

A. H. Bull Steamship Co. brought suit below against the defendant unions seeking injunctive relief and damages for alleged breaches of collective bargaining agreements between plaintiff and each defendant. Bull alleged that the court had jurisdiction of the action as a case arising under § 301 of the Taft-Hartley Act of 1947, 29 U. S. C. § 185, and by reason of the diversity of citizenship of the parties. At the outset of the action Bull moved for an injunction *pendente lite* restraining the unions from continuing peaceful strikes then in progress and requiring them to furnish plaintiff with qualified licensed officers. These strikes and defendants' failure to provide personnel constitute the

alleged breaches of contract. The defendants moved to dismiss the action for lack of jurisdiction. The trial court heard the motions on affidavits and briefs, and determined that Bull's allegations of jurisdiction raised a substantial federal question. It denied defendants' motions and issued an extensive injunction *pendente lite*.[1] Both unions appeal from the orders and contend that the court had no jurisdiction to issue the preliminary injunction.

The facts are largely undisputed. Bull, a Delaware corporation, is an operator of ships engaged in interstate and foreign commerce. National Marine Engineers' Beneficial Association, AFL-CIO (MEBA), an unincorporated association, represents licensed engineering officers aboard

---

[1] The main provisions of the injunction are contained in the following paragraphs:

"Ordered that, effective October 21, 1957 at 5:00 P. M. Eastern Daylight Saving Time, defendants National Marine Engineers' Beneficial Association, AFL-CIO, and International Organization of Masters, Mates and Pilots, Inc., AFL-CIO, their officers, agents, members, servants, employees, attorneys, and all persons in active concert or participation with them who shall or may receive actual notice of this Order, be and the same hereby are enjoined and restrained, during the pendency of this action, from picketing, striking or inciting, causing, inducing, or, in any manner, directly or indirectly, supporting any work stoppage aboard any of the vessels owned or operated by plaintiff, A. H. Bull Steamship Co., or any of its subsidiaries, wherever any such vessels may be situate or, during the pendency of this action, may call; and it is

"Further Ordered that each of said defendants specifically perform its respective agreement to furnish the plaintiff with capable, competent and physically fit licensed engineering or deck officers when and where they are required and of the ratings needed to fill vacancies necessitating the employment of such Licensed Personnel in ample time to prevent any delay in the scheduled departure of any vessel covered by said agreements; and it is

"Further Ordered that each of said defendants shall, so long as this Order remains in effect, promptly clear, validate or otherwise certify for employment aboard plaintiff's said vessels such qualified licensed officers who are members of the defendants' Unions as plaintiff may, from time to time, require."

Bull's ships. International Organization of Masters, Mates and Pilots, AFL-CIO (MM&P), a New York membership corporation, represents licensed deck officers, other than masters, aboard these ships. Bull and MEBA entered into a collective bargaining agreement on June 18, 1955, which will expire on June 15, 1958. Bull and MM&P entered into a similar agreement on July 1, 1955, which runs until September 30, 1958. Both agreements provide that "[t]here shall be no strikes, lockouts, or stoppages of work during the period of this agreement." Both agreements also provide for wage reviews after the first anniversary dates of the agreements. After the first anniversary dates each defendant notified Bull that it wished to renegotiate wages. Negotiations took place, but were unsuccessful; and on August 19, 1957, both unions called peaceful strikes to enforce their demands. The peaceful strikes continued until the trial court issued its order. The parties disagree whether or not these strikes constitute breaches of the contracts, the controversy mainly concerning whether or not the no-strike clauses are applicable to the wage-reopening clauses. Except to the limited extent discussed below, we find it unnecessary to ascertain whether or not the strikes actually constituted breaches of the contracts, since, even if they did, the trial court exceeded its jurisdiction in issuing the injunction.

Our recent decision in *A. H. Bull Steamship Co.* v. *Seafarers' International Union of North America*, 2 Cir., Nov. 21, 1957 (practically a companion case to this one) is in nearly all respects dispositive of this case. For, as we explain below, here also the issuance of an injunction is forbidden by the Norris-LaGuardia Act, 29 U. S. C. §§ 101 *et seq.* Before reaching that point, however, we must examine the trial court's assumption of jurisdiction to issue the preliminary injunction.

Bull alleged in its complaint that the trial court had jurisdiction of the action as a case arising under § 301 of the Taft-Hartley Act of 1947, 29 U. S. C. § 185, and by reason

of the diversity of citizenship of the parties. We first address ourselves to these allegations as they concern MEBA. MEBA is an unincorporated association, and all of its members must be citizens of states other than Delaware for diversity of citizenship to exist between it and Bull. *Levering & Garrigues Co.* v. *Morrin*, 2 Cir., 61 F. 2d 115, affirmed 289 U. S. 103; *Hettenbaugh* v. *Airline Pilots Ass'n International*, 5 Cir., 189 F. 2d 319. But the trial court did not premise its jurisdiction to issue the injunction on diversity grounds, for it found evidence that members of MEBA reside in the State of Delaware. Rather, it held that Bull's complaint presented a substantial question of federal jurisdiction under § 301 of the Taft-Hartley Act of 1947, 29 U. S. C. § 185, which it could not decide until assuming jurisdiction over the controversy.

The substantial question involves an interpretation of § 301(a). That section provides:

> "Suits for violations of contracts between an employer and a labor organization representing employees in an industry affecting commerce * * * may be brought in any district court of the United States, having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

MEBA contends that its collective bargaining contract with Bull is not a "contract between an employer and a labor organization representing employees," and thus § 301 does not give the district court jurisdiction to entertain the action. The Union maintains that all its members employed by Bull are "supervisors" and not "employees" as defined in the Act.[2] Moreover, it contends that it is not a "labor organization" as defined in the Act, because it does

---

[2] The Act, 29 U. S. C. § 152, defines "employees" and "supervisors" as follows:

"(3) The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless this subchapter explicitly states otherwise, and shall include any individual

not represent statutory "employees."[3] If MEBA's factual allegations are correct, § 301 by its own terms is inapplicable to this action.

The substantial question thus resolves itself into one of fact: Are the members of MEBA covered by the collective bargaining contract with Bull "supervisors" within the definitions of the Act? If they are "supervisors," then MEBA is not a "labor organization representing employees" for the purposes of this action. This result follows even if some members of MEBA outside of this bargaining unit are "employees." Section 2(5) of the Act, 29 U. S. C. § 152(5), defines a "labor organization" as "any organization * * * in which employees participate and which exists for the purpose * * * of dealing with employers concerning * * * conditions of work." In order to effectuate Congress' avowed intention to remove super-

---

whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act, as amended, from time to time, or by any other person who is not an employer as herein defined."

"(11) The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

[3] The Act, 29 U. S. C. § 152(5), defines a "labor organization" as follows:

"(5) The term 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work."

visors from the protections of the National Labor Relations Act,[4] this definition must be interpreted to mean an organization of "employees" covered by the collective bargaining agreement in question and which exists for the purpose of dealing with *their* employer. Otherwise individuals excluded by the Act could join unions which represent some "employees" and gain the protections of the Act. Thus if MEBA were classified as a "labor organization" for purposes of this action simply because some of its members who are not within this bargaining unit are statutory "employees," then supervisors could gain the protections of the Act by joining either vertically integrated unions or unions which, in some parts of the country, represent non-supervisory personnel. This result was not intended by Congress.[5]

The trial court had extensive evidence before it on this question of fact. This evidence included affidavits of MEBA officials testifying that MEBA's members are supervisors and Bull's allegations in the state court proceeding that "[T]he classifications of persons represented by the MM&P and MEBA being supervisory personnel, the said picketing is not the result of a labor dispute as that term is defined in the Labor Management Relations Act of 1947, as amended." In addition, as discussed below, the trial court held the prohibitions of the Norris-LaGuardia Act, 29 U. S. C. §§ 101 *et seq.*, inapplicable to this case because it was a dispute between an employer and supervisors (not "employees"). It is difficult for us to see how MEBA's members can be "supervisors" for purposes of the Norris-LaGuardia Act, and "employees" for purposes of the Taft-Hartley Act of 1947.

The trial court nevertheless decided to defer its factual determination of the jurisdictional issue until another time. It said:

---

[4] See H. R. Rep. No. 245, 80th Cong., 1st Sess. 8, 13, 15, 17; Sen. Rep. No. 105, 80th Cong., 1st Sess. 3-5, 14.

[5] H. R. Rep. No. 245, 80th Cong., 1st Sess. 15; Sen. Rep. No. 105, 80th Cong., 1st Sess. 3-4.

> "The plaintiff claims that in various prior proceedings the defendant MEBA made admissions that it was a 'labor organization,' while, on the other hand, the said defendant challenges those statements or their effect and alleges that the individuals are 'supervisors,' within the meaning of the Act. As to the present application, it is not necessary to adjudicate these issues, other than to find, as this Court does find that the plaintiff presents a substantial Federal question and that this Court can decide the matter only after it has assumed jurisdiction over the controversy. The complaint herein alleges the violation of a single right, the right to have its agreement performed and a single claim for relief. Under these circumstances, the Court assumes jurisdiction of the action. *Strachman* v. *Palmer*, 177 F. 2d 427; *Hurn* v. *Oursler*, 289 U. S. 238 and *Brown* v. *Haldale Estates, Inc.*, 151 F. Supp. 118."

Hurn v. *Oursler*, 289 U. S. 238, and *Strachman* v. *Palmer*, 1 Cir., 177 F. 2d 427, 12 A. L. R. 2d 687, involve the doctrine of "pendent jurisdiction." Those cases hold that, where a federal court in disposing of a federal ground for relief hears evidence concerning the merits of a similar non-federal ground not otherwise subject to its jurisdiction, the court may dispose of the non-federal grounds. The doctrine finds its jurisdiction in avoiding wasteful relitigation of essentially the same issues, thereby serving the convenience of both the parties and the courts. But there is no such saving where, as here, there has been no trial on the merits and the doctrine is resorted to as a means of drawing wide areas of state law into federal cognizance for the issuance of labor injunctions on affidavits, contrary to federal principles. Although Bull argues for just such an extension of federal jurisdiction, it must be said that the trial court (beyond citing the two cases as above) never goes so far and nowhere indicates that it issued the preliminary in-

junction on some separate state ground supporting the relief. It only goes so far as to hold that where a breach of contract exists it may enjoin the breach *pendente lite* and defer deciding questions of its jurisdiction until trial. But even this we hold to be stepping outside its authority.

Undoubtedly, in a proper nonlabor case, a federal court may issue a preliminary injunction pending its determination of a substantial question of federal jurisdiction of the action. If this were not so a court would be powerless to maintain the *status quo* in a proper case due solely to defendant's attack on its jurisdiction. But substantial probability that the court will find a basis for federal jurisdiction, like the probability of a plaintiff's final success on the merits, is a crucial element necessary to justify the issuance of an injunction *pendente lite*.[6] Here (postponing for a moment any consideration of the prohibitions of the Norris-LaGuardia Act) it appears quite likely that the court below has no jurisdiction under § 301 of the Taft-Hartley Act, 29 U. S. C. § 185, for the supervisory status of the MEBA employees of Bull is well established in the pleadings, affidavits, and briefs below. And where the probability of jurisdiction is doubtful, the only justification for issuing the preliminary injunction is that Bull will suffer irreparable harm from a maintenance of the *status quo* during the period necessary to determine the jurisdictional question which far outweighs the possible harm to MEBA and the expressed public policy forbidding federal courts to issue labor injunctions. This possibility is not shown here. In fact Bull's delay in seeking this relief controverts the probability of irreparable harm during the few days it might take the trial court to resolve the jurisdictional question.

The foregoing discussion applies in the case of MM&P to the extent that the trial court rested the injunction

---

[6] *Hall Signal Co. v. General R. Signal Co.*, 2 Cir., 153 F. 907; *Vidya, Inc. v. Majestic Metal Specialties*, D. C. S. D. N. Y., 127 F. Supp. 467.

against it on the probability of jurisdiction under § 301. Bull now strives to sustain the injunction on state grounds. But since we hold that the Norris-LaGuardia Act prohibited the issuance of this injunction we shall not here comment on the propriety of applying state substantive rules to this controversy if jurisdiction is rested on the diverse citizenship of Bull and MM&P.[7]

The Norris-LaGuardia Act § 4, 29 U. S. C. § 104, prohibits the district court from issuing the injunction herein, for this is a case involving or growing out of a labor dispute as defined in § 13 of the Act, 29 U. S. C. § 113.[8] And

---

[7] If there is a paramount federal law governing collective bargaining agreements between employers and employees in interstate commerce, as Justice Douglas seems to forecast in *Textile Workers Union of America* v. *Lincoln Mills of Alabama*, 353 U. S. 448, then it will control, whatever the ground of jurisdiction, whether diversity of citizenship, pendent jurisdiction, or federal question. See *Maternally Yours, Inc.* v. *Your Maternity Shop, Inc.*, 2 Cir., 234 F. 2d 538, 540 n. 1, 545-546, citing cases. [Judges Lumbard and Moore think it unnecessary to comment on this point at this time.]

[8] 29 U. S. C. § 113 provides the following definitions:

"(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a 'labor dispute' (as defined in this section) of 'persons participating or interested' therein (as defined in this section)."

"(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee."

Congress, in § 301 of the Taft-Hartley Act of 1947, 29 U. S. C. § 185, did not impliedly repeal the Norris-LaGuardia Act to the extent that federal courts may now enjoin breaches of no-strike clauses in collective bargaining contracts. See our full discussion of this issue in *A. H. Bull Steamship Co. v. Seafarers' International Union of North America*, 2 Cir., Nov. 21, 1957.

Bull argues, and the court below held, that § 14(a) of the Taft-Hartley Act of 1947, 29 U. S. C. § 164(a), makes the Norris-LaGuardia Act inapplicable to cases involving employers and their supervisory employees. That section provides:

> "Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this subchapter shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining."

Section 14(a) makes no explicit reference to the Norris-LaGuardia Act. The clause "no employer subject to this subchapter shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, national or local, relating to collective bargaining" contained in § 14(a) obviously does not relate to the Norris-LaGuardia Act, which prohibits federal injunctions in labor dispute cases, whether the dispute is between employers and employees, employers and employers, or employees and employees. 29 U. S. C. § 113(a). The legislative history of § 14(a) makes it clear that Congress intended the quoted clause to describe statutes which require employers to bargain collectively or be guilty of an unfair labor practice or its state law equivalent. The whole thrust of the supervisor provisions in the Taft-Hartley Act of 1947 was to remove supervisors from the operation of the

National Labor Relations Act and return them "to the basis which they enjoyed before the passage of the Wagner Act."[9] And no mention is made in the statute, the reports, or the congressional debate indicating that the Norris-LaGuardia Act was henceforth to be inapplicable to peaceful strikes by supervisory personnel. Moreover, contrary to Bull's contentions, denying the injunction on the basis of the Norris-LaGuardia Act does not compel Bull to bargain collectively with its supervisors in contradiction of the purpose of § 14(a). Bull can refuse to bargain, discharge the supervisors, and be guilty of no unfair labor practice or conduct proscribed by any other law, either national or local, relating to collective bargaining.

Order reversed; action remanded for proceedings by the district court consistent with this opinion.

---

[9] Sen. Rep. No. 105, 80th Cong., 1st Sess. 28, comments on § 14 as follows: "This is a new section which makes it clear that the amendments to the act do not prohibit supervisors from joining unions, but that it is contrary to national policy for other Federal or State agencies to compel employers who are subject to the National Board to treat supervisors as employees for the purpose of collective bargaining or organizational activity."

Senator Taft, explaining the status of supervisors under the Act, said during congressional debate:

"I shall try to summarize the changes which have been made. They are important. They make a substantial step forward toward the furnishing of equal bargaining power.

"The bill provides that foremen shall not be considered employees under the National Labor Relations Act. They may form unions if they please, or join unions, but they do not have the protection of the National Labor Relations Act. They are subject to discharge for union activity, and they are generally restored to the basis which they enjoyed before the passage of the Wagner Act." 93 Cong. Rec. 3952 (1947).

V. Court of Appeals Per Curiam—(R. 161a-162a):

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

(Argued November 26, 1957—Decision November 27, 1957)

[Same caption in each case]

Before:

LUMBARD AND MOORE, *Circuit Judges.*

Motions by defendants-appellants for immediate issuance of mandate and cross-motion by plaintiff-appellee for stay pending application for certiorari. Denied.

PER CURIAM:

The motion of the defendant-appellant for the immediate issuance of the mandate of this Court, and the cross-motion of the plaintiff-appellee for a stay pending an application to the Supreme Court for a writ of certiorari are denied.

While we recognize the importance of the questions raised in this appeal, and also that the questions are not free from doubt, it seems to us that the Supreme Court or a Justice thereof should determine the matter of the continuance of the injunction beyond the usual period for the issuance of the mandate of this Court in view of the representations of plaintiff-appellee's counsel that their petition for certiorari is being prepared and will be presented promptly. Our denial of the plaintiff-appellee's motion for a stay is without prejudice to its seeking such a stay from the Supreme Court or a Justice thereof.

* * *

Labor Management Relations Act, 1947, Sections 2(3), 2(5), 2(11), 10(h), 14(a), 208, 301(a), 302(a & e)

"DEFINITIONS

"SEC. 2. When used in this Act—

* * *

"(3) The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act, as amended from time to time, or by any other person who is not an employer as herein defined.

* * *

"(5) The term 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

* * *

"(11) The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to

direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

* * *

"LIMITATIONS

"SEC. 14. (a) Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization but no employer subject to this Act shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national of local, relating to collective bargaining.

* * *

NATIONAL EMERGENCIES

"SEC. 10. Prevention of unfair labor practices—

"(h) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part an order on the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled 'An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes', approved March 23, 1932 (U. S. C., Supp. VII, title 29, secs. 101-115)."

* * *

SEC. 208 (a) Upon receiving a report from a board of inquiry the President may direct the Attorney General to petition any district court of the United States having jurisdiction of the parties to enjoin such strike or lockout or the continuing thereof, and if the court finds that such threatened or actual strike or lockout—

(i) affects an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations; or engaged in the production of goods for commerce; and

(ii) if permitted to occur or to continue, will imperil the national health or safety, it shall have jurisdiction to enjoin any such strike or lockout, or the continuing thereof, and to make such other orders as may be appropriate.

(b) In any case, the provisions of the Act of March 23, 1932, entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", shall not be applicable.

• • •

SUITS BY AND AGAINST LABOR ORGANIZATIONS

SEC. 301. (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

• • •

RESTRICTIONS ON PAYMENTS TO EMPLOYEE REPRESENTATIVES

SEC. 302. (a) It shall be unlawful for any employer to pay or deliver, or to agree to pay or deliver, any money or other thing of value to any representative of any of his employees who are employed in an industry affecting commerce.

• • •

(e) The district courts of the United States and the United States courts of the Territories and possessions shall have jurisdiction, for cause shown, and subject to the

provisions of section 17 (relating to notice to opposite part.) of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, as amended (U. S. C., title 28, sec. 381), to restrain violations of this section, without regard to the provisions of sections 6 and 20 of such Act of October 15, 1914, as amended (U. S. C., title 15, sec. 17, and title 29, sec. 52), and the provisions of the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes," approved March 23, 1932 (U. S. C., title 29, secs. 101-115).

• • •

III. Norris-LaGuardia Act, Sections 1, 4, 7, 13(a) (b) (c)

SEC. 1:

No court of the United States, as herein defined, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this Act; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this Act.

• • •

SEC. 4:

No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

• • •

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

* * *

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 3 of this Act.

SEC. 7:

No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as herein defined, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—

(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

(b) That substantial and irreparable injury to complainant's property will follow;

(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

(d) That complainant has no adequate remedy at law; and

(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to the chief of those public officials of the county and city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant's property: *Provided, however*, That if a complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing after notice. Such a temporary restraining order shall be effective for no longer than five days and shall become void at the expiration of said five days. No temporary restraining order or temporary injunction shall be issued except on condition that complainant shall first file an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense those enjoined for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction,

including all reasonable costs (together with a reasonable attorney's fee) and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court. * * *

SEC. 13:

When used in this Act, and for the purposes of this Act—

(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as hereinafter defined) of "persons participating or interested" therein (as hereinafter defined).

(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole

or in part of employers or employees engaged in such industry, trade, craft, or occupation.

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

* * *